COMMON SCOLD. — DUCKING-STOOL. — The recent New Jersey decision [1] that a common scold is indictable as a common nuisance at once arouses one's curiosity to know if the court sends her to the ducking-stool, — the common-law punishment for this common-law offence, — and to wonder, further, if the gag, the whipping-post, and the pillory are still common down there in New Jersey. Those instruments of punishment are certainly scarcely less civilized than this offence *communis rixatrix*,[2] which degrades woman to the condition of a mere thing, a nuisance, and is really a relic of a time when woman was a slave or servant, when witches and gypsies were hung, noses were cut off, and tongues were cut out for false rumors.

To be sure the offence was pretty generally recognized in the early days of the colonies, while in Virginia, and perhaps in other colonies as well, the ducking-stool was common as its punishment. In 1634, a man writing from Virginia to Governor Endicott of Massachusetts describes the ducking of a scold there which he has just witnessed, and then continues: "Methought such a reformer of great scolds might be in use in some parts of Massachusetts Bay, for I've been troubled many times by the clatter of y^e^ scolding tongues of women y^t^ like y^e^ clatter of y^e^ mill seldom cease from morning till night."[3] Whether the instrument was ever in use in Massachusetts is doubtful, although one was said to have been in existence in a small Massachusetts town not many years ago. In New York the ducking-stool was early decided against; and, much more than this, in the time of Governor Fletcher the rule against scolds in New York was very properly — if such a rule was to be maintained at all — extended to apply impartially to men and women alike.

Coming down to the present century, in a Pennsylvania case[4] so late as 1825, a woman was convicted of being a common scold and sentenced to be ducked three times; but the case going up to the higher court, the judge said such punishment had never prevailed in Pennsylvania, and he should not allow it; that while he admired the general structure of the common law as much as any one could, still, — as he expressed it, — "I am not so idolatrous a worshipper as to tie myself to the tail of this dung-cart of the common law." He further said he hesitated to decide the offence indictable even, but on this point he yielded to his brother judges.

That Pennsylvania decision was half a century ago, and while it seems to us surprising that even then a judge should have only "hesitated" to decide a scolding woman indictable as a common nuisance, yet at the present time it seems not only surprising but monstrous that we have not advanced far enough towards the equal rights of woman, but that she who scolds may be fined, imprisoned, or ducked, while the most scandalously abusing and railing man goes unpunished.

JUSTICE — SALE OF CHURCH PROPERTY FOR DEBTS. — The recent decision of the Georgia court[5] that a church site and edifice should be

---

[1] *Baker* v. *State*, 20 Atl. Rep. 858.
[2] IV. Black. Com. 169.
[3] Amer. Hist. Rec. 204.
[4] *Jones* v. *Com.*, 12 S. & R. 220.
[5] *Lyons* v. *Savings Bank*, 12 S. E. Rep. 882.

sold to pay the salary of the pastor is of interest to lawyers and ministers alike. So, too, is the little dissertation upon justice contained in the opinion of the court. After expressing the view that if any debt ought to be paid it is one contracted for the health of souls, and if any class of debtors ought to pay, the good people of a Christian church are of that class, the learned judge continues: "The study of justice for more than forty years has impressed me with the supreme importance of this grand and noble virtue. Some of the virtues are in the nature of moral luxuries, but this is an absolute necessity of social life. It is the hog and hominy, the bacon and beans, of morality, public and private. It is the exact virtue, being mathematical in its nature. Mercy, pity, charity, gratitude, magnanimity, etc., are the liberal virtues. They flourish partly in voluntary concessions made by the exact virtue, but they have no right to extort from it any unwilling concession. A man cannot give in charity, or from pity, hospitality, or magnanimity, the smallest part of what is necessary to enable him to satisfy the demands of justice. It is ignoble to indulge any of the liberal virtues by leaving undischarged any of these imperative demands against us. . . . We think a court may well constrain this church to do justice. In contemplation of law, justice is not only one of the cardinal virtues, it is the pontifical virtue."

THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

CONTRIBUTORY NEGLIGENCE. — CAUSATION. — (*From Professor Smith's Lectures.*) — The expression "contributory" negligence is inaccurate and misleading. It suggests that a penalty attaches to a man's failure to exercise due care in his own behalf. Such, however, is by no means the case. No one owes to himself a duty of care, and a penalty can only attach where there has been a breach of duty. Further, negligence may be contributory in any one of several ways. 1. It may be contributory in the sense of being an element in the chain of antecedents of which the injury complained of is the consequent. 2. It may be contributory in the sense of operating simultaneously and concurrently with the defendant's negligence to produce the injury complained of. 3. It may be contributory in the sense of calling into actual existence the cause itself of the injury. It is in this last sense that it is generally used and understood in the law. But "causative" or "decisive" negligence would much better express the meaning of the doctrine. As Mr. Beven, in his work on Negligence, says, contributory negligence is really only a special application of the law of negligence. What he really means is, that contributory negligence is only a special application of the doctrine of causation. "The true ground of contributory negligence being a bar to recovery is that it is the proximate cause of the mischief" (Pollock on Torts, 2d